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October 20, 2003

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Office of Enforcement  
Compliance & Environmental  
Justice

Re: Rico, Colorado  
St. Louis Tunnel

**PUBLIC  
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Dear Mr. Duffy:

This letter is provided to you in response to your letter of October 14, 2003. At a meeting held at your office on December 16, 2002, Atlantic Richfield (BP Amoco) demanded that NL pay 75% of the costs relating to addressing the discharge from the St. Louis Tunnel that allegedly is adversely impacting the Dolores River. At that meeting, in response to my request, you stated that you would provide a written analysis of NL's alleged liability for the discharge from the St. Louis Tunnel that purportedly would support assigning a 75% share of costs to NL. Nearly a year has passed since our meeting and I have received no such analysis.

However, in addition to your letter of October 14, 2003, we have received correspondence dated July 11, 2003, March 18, 2003, February 11, 2003, January 31, 2003, December 26, 2002 and December 24, 2002 that continues your longstanding effort to seek NL's involvement and participation in developing a response to the St. Louis Tunnel discharge without any factual basis for assigning responsibility to NL. Among other things, this effort is designed to limit the role of the US EPA and the federal regulatory process, including public participation, established under CERCLA and the National Contingency Plan.

Since 1995 when NL first received notice of this matter from Atlantic Richfield, we have periodically requested information that is within your client's possession that is crucial to understanding the history of the activities that caused the discharge from the St. Louis Tunnel. For more than eight years, however, Atlantic Richfield has failed to provide any information that supports a claim that either NL or St. Louis Smelting & Refining Company has responsibility for the conditions impacting the Dolores River.

To our knowledge, Atlantic Richfield has not been required to respond to a CERCLA §104(e) request from the US EPA to disclose information and

knowledge within its possession regarding the St. Louis Tunnel.<sup>1</sup> As the following history of the site demonstrates, if required to respond to a CERCLA §104(e) request or if litigation occurs, Atlantic Richfield will be determined to be solely responsible for the discharge from the St. Louis Tunnel that is impacting the Dolores River.<sup>2</sup>

\* \* \*

### **St. Louis Smelting & Refining Operations**

In October 1930, St. Louis Smelting & Refining Company began a development and haulage tunnel (the St. Louis Tunnel) into CHC Hill on the southwestern side of Telescope Mountain in Rico, Colorado. Due to low metals prices, ore was mined only sporadically from the St. Louis Tunnel during the years of the Great Depression. As such, St. Louis Smelting & Refining Company's operations were characterized by short periods of development activity followed by long periods of inactivity. In the end, relatively little ore was produced from the St. Louis Tunnel before St. Louis Smelting & Refining Company abandoned its Rico holdings, including the St. Louis Tunnel, in 1942. Neither NL nor St. Louis Smelting conducted operations in Rico after this date.

During the period of development between 1930 and 1942, St. Louis Smelting & Refining operated a 10-ton battery powered trolley locomotive inside the St. Louis Tunnel to remove the ore. Electric lighting was installed inside the St. Louis Tunnel to assist in the development work. (The original trolley tracks are still visible today at the entrance of the Tunnel and have been documented in photographic evidence collected in February 2003.) The ore extracted by the St. Louis Smelting & Refining Company was transported by railroad cars to Utah for milling and processing.

St. Louis Smelting & Refining Company's use of the Tunnel was incompatible with its later--and current--use as a drainage discharge adit. Available information confirms that no discharge of water to the Dolores River occurred during the period 1930 to 1942. Specifically, extensive photographic documentation of the dry conditions both inside and outside the St. Louis Tunnel and the surrounding area during the period 1930 to 1942 can be found in the

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<sup>1</sup> The Court's Memorandum Ruling dated July 19, 1996 in Crystal Oil Company v. Atlantic Richfield Company, CA No. 95-21115 (United States District Court, Western District of Louisiana, Shreveport Division), states in relevant part: "According to the affidavit of its counsel, ARCO maintains in Colorado a repository of thousands of documents pertaining to the RICO site." See, p. 16.

<sup>2</sup> This letter does not address the other extensive mining operations of Atlantic Richfield's predecessors, International Smelting & Refining Company and Pelleyre Mining & Milling Company, in Rico during the period of time before 1944.

Orval L. Jahnke Collection; the William A. Graves Collection; the David Butler Collection; the Freda Engel Collection; and the Charles Miller Engel Collection. (See also, newspaper articles in *The Rico Item*, *The Rico-Dove Creek News*, and *The Dove Creek Press*, 1930-1942; and the State of Colorado Bureau of Mines, "Inspector's Reports" for the St. Louis Tunnel, 1930-1942.) Photographic evidence proves beyond a doubt that no water was present in or discharged from the St. Louis Tunnel during the period 1930 to 1942.

### **Rico-Argentine Mining Company Operations**

In 1944, Atlantic Richfield's predecessor, Rico-Argentine Mining Company, acquired the rights to the St. Louis Tunnel. Initially, Rico-Argentine actively developed ore from inside the St. Louis Tunnel. Due to World War II, the mid 1940s was a period of significant ore production from the St. Louis Tunnel. However, by the late 1940s, these operations began to decline.

From 1953 to 1955, Rico-Argentine drilled a 4,000' crosscut from the St. Louis Tunnel at the 8,844' level to connect the Blaine and Argentine Mines on Mountain Springs at the 9,500' level in order to dewater the Blaine and Argentine Mines through gravity drainage directed out the St. Louis Tunnel and then into the Dolores River. Information indicates that the company believed that this approach was more efficient and cost-effective than pumping water out of Blaine and Argentine mines, which were at a higher elevation than the St. Louis Tunnel.

Various reports document the effort and progress of Rico-Argentine in connecting the St. Louis Tunnel to the Blaine and Argentine workings and dewatering the Blaine and Argentine workings through the gravity dewatering process. One document states that "[t]he long crosscut from the St. Louis tunnel to the Argentine shaft on Silver Creek [e.g., Blaine and Argentine] was finished in 1955, lowering the water level in the Silver Creek mine workings by about 450 feet and draining a large block of mineralized ground. . . Driving of the St. Louis Tunnel under CHC Hill with a crosscut to Silver Creek has simplified the drainage problem . . . [Rico-Argentine Mining Company] drove the new shaft on the northwest side of the creek. The St. Louis crosscut serves a very useful purpose in providing gravity drainage for all workings on, or above, the 500 level." (See, USGS Professional Paper #723, Edwin T. McKnight) According to the Colorado Bureau of Mines 1955 Annual Report: "The Rico Argentine Company is continuing their work on the St. Louis Tunnel, which will connect with the Blaine workings at a lower elevation and act as a drainage tunnel for the area."

Rico-Argentine's actions converted the St. Louis Tunnel from an ore haulage tunnel with a functioning locomotive system and electricity into a drainage adit, which resulted in the commencement of the flow of water into the Dolores River that continues to this day.

During the mid-1950s, in connection with the processing of uranium ore, Rico-Argentine also began operation of a large sulphuric acid plant near the entrance of the St. Louis Tunnel. Rico-Argentine constructed a series of settling ponds--present to this day--in connection with the operation of the sulphuric acid plant. The operation of the sulphuric acid plant caused significant contamination to the area. One authority stated that "[p]ollution of the Dolores River and harmful effects on local vegetation brought about the closure of the plant in 1964." (See, "The Mineralogical Record--The Mines and Minerals of Rico" Vol. 16, May-June 1985) In addition, US EPA's expert Tetra Tech determined that Rico-Argentine's acid plant and adjacent settling ponds are a source of contamination to the Dolores River:

"The waste materials from the acid plant and drainage from the St. Louis Mine were flumed to tailings pond adjacent to Silver Creek and the Dolores River . . . These tailings ponds were poorly maintained and frequently ruptured during the winter. For example, during the winter of 1966-1967, almost continual spillage of tailings into Silver Creek and the Dolores River were observed. These spills completely covered the bottom with gray deposits and orange-red iron oxide flocculent. This led to the loss of populations of aquatic organisms inhabiting Silver Creek and the downstream sections of the Dolores River . . . The Rico-Argentine Mining Company built a 300' by 500' leach pad next to the old sulfuric acid plant in 1973. A cyanide solution was used to leach silver and gold from raw ore, and an overflow of an unknown quantity of leaching liquor to the Dolores River occurred sometime in 1974."

(See, <http://www.epa.gov/Region8/water/tmdl/files/ch3.pdf>)

The contamination in the settling ponds from these operations remains present to this day and is continuing to enter the Dolores River. Neither NL nor St. Louis Smelting & Refining Company had anything to do with the sulfuric acid operations and the failure to maintain the settling ponds constructed by Atlantic Richfield. Several sources document Atlantic Richfield's neglect of the settling ponds and the resulting harm to the Dolores River from the discharge of the settling ponds. Photographic and other evidence show the extensive damage these operations have caused to the surrounding environment and the Dolores River.

Following the termination of Rico-Argentine's mining operations, the mines, including the St. Louis Tunnel, were purposely allowed to flood which apparently caused significantly more water to be discharged to the Dolores River. According to the State of Colorado, Bureau of Mines Information Report dated June 10, 1971: "Mining operations were ceased May 26, 1971 . . . These lower levels will be allowed to flood, the St. Louis Tunnel is connected at the 500 level and any flooding above this elevation will be drained through this connection." The Colorado Bureau of Mines Information Report on the St. Louis Tunnel dated

December 5, 1974 states in relevant part: "This tunnel provides drainage for the Rico Argentine and Blaine Mines. The mines are idle at present but drainage is maintained continuously."

In 1972, shortly after the intentional flooding of the mines, Rico-Argentine acquired the water rights to the discharge from the St. Louis Tunnel and the Blaine workings. (See, In the Matter of the Application for Water Rights of Case No. W-802, In the District Court in and for Water Division No. 7, State of Colorado, Case No. W-802 dated October 19, 1972 "St. Louis Tunnel" and In the Matter of the Application for Water Rights of Case No. W-801, In the District Court in and for Water Division No. 7, State of Colorado, Case No. W-801 dated October 19, 1972 "Blaine Tunnel") The Recommendation of the Division Engineer in Case No. W-802 (the St. Louis Tunnel water rights) states that "this is the main water supply for the operation of the Mining Company. The water is developed from their main tunnel." The Recommendation further notes that the "means of diversion" is "gravity flow." In the application for Case No. W-802, Orval L. Jahnke, on behalf of Rico-Argentine, states that the amount of water claimed from the St. Louis Tunnel is 538 gallons per minute to be used for "drilling water, cooling water, domestic water and stock water."

**Atlantic Richfield is the successor to Rico-Argentine & Expressly Assumed All Environmental Liabilities of Rico-Argentine Mining Company**

On August 27, 1980, Anaconda Company--which was merged into Atlantic Richfield in December 1981--acquired substantially all of the assets of the Rico-Argentine Mining Company from Crystal Exploration and Production Company (El Paso Corporation). Atlantic Richfield estimated that a present worth of \$130 million in molybdenum deposits were present in Rico. The closing occurred after a significant three-year period of environmental due diligence through which Atlantic Richfield obtained a discount of nearly \$16 million from the \$20 million initial purchase price for the purpose of addressing environmental concerns. In the end, Atlantic Richfield paid a heavily discounted purchase price of \$4.5 million to Crystal for the Rico holdings that Atlantic Richfield estimated would generate \$130 million.

The Closing Agreement between Anaconda and Crystal makes clear that Anaconda intended to acquire the Blaine and St. Louis Tunnels (See, Schedule 1 of Patented Mining Claims, "Martha" Patent No. 1115034/Mineral Survey No. 20619 and "Mervin" Patent No. 1115034/Mineral Survey No. 20619--aka, the St. Louis Tunnel--to the Mining Deed dated August 27, 1980) as well as the associated NPDES Discharge Permit No. CO-0029793 regulating discharge from the St. Louis Tunnel.<sup>3</sup> (See, Paragraph 2 of the Closing Agreement)

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<sup>3</sup> The June 30, 1987 NPDES Permit No. CO-0029793 issued to The Anaconda Minerals Company for discharges from the St. Louis Tunnel to the Dolores River specifically states that

Anaconda specifically agreed to pay all penalties and costs relating to St. Louis Tunnel NPDES permit discharge violations occurring *before* August 27, 1980 that were in excess of \$30,000. (See, Paragraph 3(a) of the Closing Agreement) Anaconda also acquired the water rights from both the Blaine workings and the St. Louis Tunnel. (See, Schedule 5 to the Mining Deed dated August 27, 1980)

Paragraph 3(c) of the Closing Agreement makes clear that Atlantic Richfield acquired environmental liabilities related to the St. Louis Tunnel:

Anaconda shall be solely and fully responsible for any and all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or EPA, including, without limitation, clean-up orders or the installation of pollution control facilities, devices, plans or programs. In no event shall Crystal be liable for or subject to, either directly or indirectly, any such compliance costs or requirements.

Prior to the closing, Anaconda hired the nationally-recognized environmental consulting firm Camp Dresser & McKee (CD&M) to undertake the environmental due diligence at Rico. The discharge from the St. Louis Tunnel was extensively investigated and remedial alternatives were considered and analyzed. With respect to the St. Louis Tunnel discharge, CD&M concluded: "In all cases, it is proposed that the waste flows from Silver Creek [e.g. Blaine and Argentine] be collected and transferred by gravity flow to the St. Louis Tunnel site." (See, "Report on Environmental Liability Assessment of Rico-Argentine Mining Company, Rico, Colorado" dated September 28, 1979)

In addition, internal contemporaneous Anaconda memoranda extensively document the environmental liabilities to be assumed in connection with the transaction. The "Summary of Justification" prepared by Atlantic Richfield officials to support the acquisition states that "[p]urchase of the Rico property involves assumption of environmental liabilities as the substantial surface and mineral assets. Tailings stabilization *and water treatment* costing about \$15.4 million may be needed to correct environmental damage left from 100 years of silver mining."<sup>4</sup> (Emphasis added)

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<sup>4</sup>operations consisted of a mill near Silver Creek [e.g., Blaine and Argentine Workings] an [sic] acid plant and cyanide heap leach along the Dolores River in the St. Louis mine area. Discharge point 001 was the discharge from the Blaine Tunnel. The permittee will no longer discharge from 001 except in emergency bypass situation. Currently, water from the Blaine Tunnel is redirected underground to the St. Louis Tunnel where it drains into thirteen settling ponds. The outfall of the final pond (pond 5) is discharge point 002 [e.g., the Dolores River]. (Emphasis Added)

The Summary then notes that "[i]f exploration does not find a deposit of interest to Anaconda, the company will have purchased \$5 million of surface assets, an estimated \$5 million of mineral rights, and \$15 million of environmental liabilities. Disposal of the property with some of the environmental problems still attached, [sic] could probably be achieved at break even costs via sale to a ski resort development corporation or mining company."

A detailed Atlantic Richfield memorandum accompanying the Summary provides in relevant part:

"The second area of concern is the \$15.4 million cost estimate for environmental remediation. Although this cost was incorporated into both purchase options in an identical manner and does not significantly detract from the overall economics of the project, the liability represents the most significant exposure should the project fail to meet molybdenum target expectations. If Anaconda were to purchase now or in 1981 based on only 'near discovery data', the exposure would be \$15.4 million, with a continued caretaking cost of \$200,000 per year until the property was disposed of via sale to either a real estate concern or to a competitor mineral development company."

A memorandum supporting the foregoing document states as follows: "My basic conclusion is that the environmental liabilities at RICO have not been overstated by the CDM report and the recommended control actions will require about \$16,000,000 in costs over the initial years of Anaconda ownership." (Emphasis in original) That same memorandum examines the various environmental issues at Rico and states, in relevant part: "Blaine Workings--Environmental Liability: Discharges polluted water to St. Louis Tunnel. St. Louis Tunnel Adit--Environmental Liability: Discharges polluted water to Settling Ponds." (See, Anaconda Memorandum dated April 14, 1980 from A. Barber to R. Krablin re "Rico Environmental Considerations")

Various internal Anaconda memoranda supporting the \$16 million purchase price discount include detailed cost analyses for responding to Rico environmental issues and include specific components for a water treatment plant, collection and treatment system at the St. Louis Tunnel--costs for which Atlantic Richfield is attempting to transfer onto NL more than 20 years after the closing. (See, Anaconda Memorandum dated October 9, 1979 from John C. Wilson to Jack Whyte re "Rico Environmental Liability Assessment")

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<sup>4</sup> The Summary also discloses Atlantic Richfield's related objective: "Purchase of Crystal's assets now will block development of the town as a tourist resort and insure availability of important fee land for development of a major mine."

It is not necessary to detail Atlantic Richfield's well-known effort in 1988 to transfer its obligations for Rico environmental liabilities, including the St. Louis Tunnel NPDES Discharge Permit, onto Rico Development Corporation in return for \$950,000 and an indemnification from the buyer for the St. Louis Tunnel NPDES discharge permit. (See, Purchase and Sale Agreement dated May 9, 1988, paragraph 6) Extensive litigation initiated by the United States against the Rico Development Corporation and its principals under the Clean Water Act has resulted from that failed effort.

Finally, we are aware of the litigation that Crystal Oil Company (El Paso Corporation) filed against Atlantic Richfield in response to Atlantic Richfield's threats against Crystal relating to the environmental liabilities of Rico-Argentine Mining Company. (Crystal Oil Company et al. v. Atlantic Richfield Company, CV-95-2115, United States District Court, Western District of Louisiana, Shreveport Division, filed November 30, 1995) The evidence produced in that litigation, as well as its ultimate resolution, has led to the conclusion that Atlantic Richfield is the successor to the Rico-Argentine Mining Company and that Atlantic Richfield expressly assumed all environmental liabilities of Rico-Argentine in Rico, specifically including the discharges from the St. Louis Tunnel into the Dolores River. Atlantic Richfield's direct and significant role in more recent years (subsequent to the resolution of that litigation) at the St. Louis Tunnel further supports the conclusion that Atlantic Richfield is aware that it is solely responsible for the actions of Rico-Argentine Mining Company that caused the current environmental conditions at the St. Louis Tunnel.

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Your October 14, 2003 letter repeats the assertion: "Atlantic Richfield will seek contribution from NL Industries for NL's equitable share of design, construction, and future operation and maintenance costs of the system approved by the State of Colorado." As the foregoing facts clearly demonstrate, NL does not have liability for the discharges from the St. Louis Tunnel that are reaching the Dolores River. As such, NL sees no basis for participating in the October 30, 2003 meeting or in Atlantic Richfield's efforts to work around the requirements of the CERCLA regulatory process, including the critical public participation process and the detailed analysis of appropriate remedial alternatives for addressing the conditions in the Dolores River.

The evidence is clear that through the actions of the Rico-Argentine Mining Company, Atlantic Richfield is solely responsible for causing the discharge from the St. Louis Tunnel and settling ponds that is impacting the Dolores River. Atlantic Richfield acquired the St. Louis Tunnel with knowledge of its history but has spent a mere \$500,000 or so, according to your letter dated November 15, 2002, to address the St. Louis Tunnel.



William J. Duffy  
St. Louis Tunnel  
October 20, 2003  
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Finally, as I have requested repeatedly over the years to you and to the prior Atlantic Richfield attorneys and representatives handling this matter, if Atlantic Richfield does have information suggesting or indicating that NL caused the discharges from the St. Louis Tunnel that are impacting the Dolores River, that information should have been provided to NL long ago.

If Atlantic Richfield (BP Amoco) initiates litigation against NL relating to this matter, NL will vigorously defend itself and pursue attorneys' fees, costs and other appropriate relief. If litigation does ensue, Crystal Oil (El Paso Corporation) may also be involved since NL will seek a declaration that these entities should be allocated 100% of the response costs relating to the St. Louis Tunnel discharge.

By copy of this letter to US EPA, NL hereby supplements its response to the CERCLA §104(e) response submitted on May 14, 2001.

Very truly yours,

HIGHLAND ENVIRONMENTAL  
MANAGEMENT, LLC



Marcus A. Martin

MAM/web

cc: Eric James Heil  
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